

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic Mail

September 27, 2018

Ms. Deb LaMarche
Utah Telehealth Network
101 Wasatch Drive, Room 215
Salt Lake City, UT 84112

Re: Utah Telehealth Network – Appeal of USAC's Decision for the
Funding Request Numbers Listed in Appendices A and B

Dear Ms. LaMarche:

The Universal Service Administrative Company (USAC) has completed its evaluation of the August 11, 2017 letters of appeal (Appeal) submitted by Utah Telehealth Network (UTN), health care provider (HCP) number 17264.¹ On July 28, 2017, USAC denied UTN's funding requests for support under the federal Universal Service Healthcare Connect Fund Program (HCF Program) for funding year (FY) 2017.² The Appeal requests that USAC reverse the denial of the FY 2017 funding request numbers (FRNs) listed in Appendices A and B (Appeal FRNs) and consider funding the FRNs in the HCF Program.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that the Federal Communications Commission (FCC) requirements support the denial of the FRNs listed in Appendix A because UTN's contracts were not approved as master contracts in the Schools and Libraries program, also known as the E-rate program, at the time the FCC Forms 462 were submitted. USAC has also determined that the FCC requirements do not support the denial of FRN 17275101 for failure to qualify as an E-rate competitive bidding exemption, since the FCC Form 462 was filed as a Government Master Services Agreement (MSA) exemption. Therefore, USAC will reverse the denial of funding for FRN 17275101. Based on HCF Program rules and requirements, USAC denies the Appeal for the FRNs listed in Appendix A, and will reverse its decision and continue with its review of the funding request for FRN 17275101, listed in Appendix B.

¹ See Emails from Sabrina Scott, Utah State E-rate Coordinator, Utah Education and Telehealth Network (UTN), to the Rural Health Care Division, USAC (Aug. 11, 2017) (Appeal).

² See Emails from the Rural Health Care Division, USAC, to Sabrina Scott, UTN (July 28, 2017) (Administrator's Denials of Appendix A FRNs); See Email from the Rural Health Care Division, USAC, to Sabrina Scott, UTN (July 28, 2017) (Administrator's Denial of FRN 17275101).

³ *Id.*

Background

FCC rules require applicants participating in the HCF Program to engage in a competitive bidding process for supported services, facilities, or equipment, unless they qualify for one or more exemptions.⁴ The acceptable competitive bidding exemptions in the HCF Program are: (1) annual undiscounted cost of \$10,000 or less; (2) Government MSAs; (3) MSAs approved under the Pilot Program or HCF Program; (4) Evergreen contracts; or (5) Schools and Libraries program master contracts.⁵ An applicant who utilizes a competitive bidding exemption does not need to file the FCC Form 461 (Request for Services Form) and may proceed directly to filing an FCC Form 462 (Funding Request Form).⁶ The HCP uses the FCC Form 462 to provide information about the services selected and certify that those services are the most cost-effective option of the offers received.⁷

HCPs participating in a consortium may be eligible to utilize the Schools and Libraries Program master contracts competitive bidding exemption (“E-rate exemption”). FCC rules state that, “an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium’s existing contract is exempt from the Healthcare Connect Fund competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract.”⁸ In order for an HCP to qualify for the Government MSA exemption, the services and equipment must be “purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others” and the MSAs must have been “awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements.”⁹

UTN’s Funding Requests

On June 30, 2017, UTN submitted seven FY 2017 FCC Forms 462 for leased/tariffed facilities or services claiming the E-rate Approved Contract exemption on line 8 of the FCC Forms 462.¹⁰ Attached to its FY 2017 FCC Forms 462 were copies of the “E-rate approved contracts.”¹¹ During the review of the FRNs listed in Appendix A, USAC reviewed the statuses of the relevant E-rate forms and determined that the FCC Forms 471 (Description of Services Ordered and Certification

⁴ 47 C.F.R. § 54.642(a).

⁵ 47 C.F.R. § 54.642(h).

⁶ 47 C.F.R. § 54.642(a); *see* Rural Health Care (RHC) Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (July 2014) (*FCC Form 462*); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2-3 (Aug. 5, 2014) (*FCC Form 462 Instructions*).

⁷ *See* USAC, Healthcare Connect Fund Program: Step 6 Submit Funding Requests, *available at* <http://www.usac.org/rhc/healthcare-connect/individual/step06/default.aspx> (last visited August 20, 2018).

⁸ 47 C.F.R. § 54.642(h)(5).

⁹ 47 C.F.R. § 54.642(h)(2).

¹⁰ *See* FY 2017 FCC Forms 462 listed in Appendix A.

¹¹ *Id.*

Form) containing the “E-rate approved contracts” had not yet been processed. On July 28, 2017, USAC denied UTN’s FRNs listed in Appendix A because the E-rate contracts were not approved as master contracts in the E-rate program at the time the FY 2017 FCC Forms 462 were filed with USAC.¹²

Also on June 30, 2017, UTN submitted a FY 2017 FCC Form 462 requesting support for network equipment from ConvergeOne, Inc., claiming a Government MSA exemption on line 8 of the FCC Form 462.¹³ UTN attached to its FY 2017 FCC Form 462 a copy of the “Government Master Services Agreement” and a summary of the equipment being sought by the consortium.¹⁴ On July 28, 2017, USAC denied FRN 17275101 because the E-rate contract was not approved as a master contract in the E-rate program at the time the FY 2017 FCC Form 462 was filed with USAC.¹⁵

UTN’s Appeal

On August 11, 2017, UTN submitted the Appeal requesting that USAC rescind the commitment decision denials and consider further action regarding commitment decisions for the Appeal FRNs.¹⁶ In the Appeal, UTN states that it “negotiated and executed numerous E-rate contracts resulting from a comprehensive Request for Proposal issued under the FCC E-rate and Utah State procurement rules and regulations.”¹⁷ UTN also asserts that, based on 47 C.F.R. § 54.642, “USAC’s denial of [each] funding request is premature until SLD has issued E-rate commitment decisions” and that, based upon USAC’s published guidance that an applicant who uses a contract negotiated under the E-rate program is exempt from competitive bidding, “these funding requests should have been approved outright.”¹⁸

Subsequent to filing the Appeal, UTN also sent email confirmations of the E-rate contract approvals related to FRNs 17267181, 17269321, 17270941, 17273181, 17273581, and 17281301 with the assertion that “the rationale for the denial of [the associated FRNs] no longer applies and that UTN complied with the HCF competitive bidding exemption standard afforded E-rate negotiated contracts.”¹⁹

Administrator’s Decision on Appeal

Decision on Appeal for the FRNs listed in Appendix A

In order for the FRNs listed in Appendix A to be exempt from competitive bidding under the E-rate

¹² See Administrator’s Denials of Appendix A FRNs.

¹³ FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017).

¹⁴ *Id.*

¹⁵ See Administrator’s Denial of FRN 17275101.

¹⁶ See generally Appeal.

¹⁷ *Id.*

¹⁸ *Id.*; see also USAC, Healthcare Connect Fund Program: Step 4 Prepare for Competitive Bidding, available at <https://www.usac.org/rhc/healthcare-connect/Consortia/step04/exemptions.aspx> (last visited August 20, 2018).

¹⁹ Emails from Sabrina Scott, UTN to RHC Appeals, USAC (Nov. 9, 2017 and Jan. 26, 2018) (Contract Approvals).

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program master contract exemption, FCC rules state that the contract must have been “*approved* in the schools and libraries universal service support program as a master contract”²⁰ (emphasis added). At the time the FY 2017 FCC Forms 462 for the FRNs listed in Appendix A were submitted (*i.e.*, the E-rate program master contract exemptions were claimed), the contracts had been submitted to USAC, but were not yet approved by USAC.²¹ Because USAC is not authorized to waive the FCC’s rules and requirements for the HCF Program,²² USAC is unable to reverse its denial of UTN’s funding requests listed in Appendix A and hereby denies that portion of the Appeal.

Decision on Appeal for FRN 17275101

UTN claimed a Government MSA exemption for FRN 17275101 and requested support for network equipment.²³ During USAC’s review of the FCC Form 462 and the supporting documentation, USAC did not review the contract uploaded to the FCC Form 462 for compliance with FCC rules and requirements governing Government MSAs. In addition, USAC did not confirm with UTN what functions the network equipment would perform. Therefore, USAC reverses the denial for FRN 17275101, listed in Appendix B, and will proceed with its review of this funding request.

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

/s/ Universal Service Administrative Company

cc: Sabrina Scott, Utah Education and Telehealth Network

²⁰ 47 C.F.R. § 54.642(h)(5) (emphasis added).

²¹ See Appendix A FRNs.

²² See generally, 47 C.F.R. § 54.702(c) (2014) (“[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.”); 47 C.F.R. § 1.3 (2014) (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.”).

²³ FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017).

Appendix A
List of Appealed FRNs Claiming E-rate Approved Contract Exemption

FRN	Service Provider	FCC Form 466	E-rate FRN and Contract Approval Date
17267181	All West Communications, Inc.	FY 2017 FCC Form 462 for FRN 17267181 (June 30, 2017)	1799076991 (Dec. 1, 2017)
17269321	South Central Utah Telephone Association, Inc	FY 2017 FCC Form 462 for FRN 17269321 (June 30, 2017)	1799067528 (Sept. 1, 2017)
17270941	CenturyLink Qwest Corporation	FY 2017 FCC Form 462 for FRN 17270941 (June 30, 2017)	1799106755 (Sept. 8, 2017)
17273181	Central Utah Telephone Inc.	FY 2017 FCC Form 462 for FRN 17273181 (June 30, 2017)	1799067558 (Jan. 18, 2018)
17273581	EMERY TELEPHONE	FY 2017 FCC Form 462 for FRN 17273581 (June 30, 2017)	1799075392 (Jan. 13, 2018)
17274321	Comcast Business Communications	FY 2017 FCC Form 462 for FRN 17274321 (June 30, 2017)	1799088613 (Feb. 8, 2018)
17281301	UBTA-UBET Communications, Inc	FY 2017 FCC Form 462 for FRN 17281301 (June 30, 2017)	1799096201 (Sept. 8, 2017)

Appendix B
Appealed FRN Claiming Government MSA Exemption

FRN	Service Provider	FCC Form 466
17275101	ConvergeOne, Inc.	FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017)